



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 06-30

SUBJECT: GARY WATERS, MEMBER,
NEVADA STATE BOARD OF EDUCATION

**SECOND SUPPLEMENTAL INFORMATION FOR THE PANEL
MAY 16, 2007**

A. ADDITIONAL INVESTIGATIVE ACTIVITIES:

- Contacted Mr. Waters to obtain any additional information that he may have regarding compensation received by the center
- Reviewed letters relating to the Columbia TeenScreen project (Supplemental TAB B):
 - Dated November 7, 2005, from the Department of Health and Human Services to the Southern Nevada Health District regarding issue of a project subgrant to the Department of Education
 - Dated November 14, 2005, from the Southern Nevada Health District to the Department of Health and Human Services regarding current expenditures for the project
- Received Memorandum dated, May 9, 2007, from Keith Rheault, Nevada Department of Education Superintendent of Public Instruction, to the Nevada Commission on Ethics, clarifying the funding regarding the center. The following documents were included (Supplemental TAB C):
 - October 21, 2005 meeting agenda of the Board of Trustees for the Trust Fund for Public Health with a discussion/action item regarding the transfer of the Columbia TeenScreen grant to the Nevada Department of Education
 - Notice of subgrant award to the Nevada Department of Education

B. RECOMMENDATIONS:

Based on the results of additional investigation, it is recommended that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (2)
- NRS 281.481 (7)

SPECIFIC REASON:

Sufficient credible evidence does not exist to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether Mr. Waters violated the provisions of NRS 281.481(2) or NRS 281.481(7).

Based upon the additional investigative activities, it is recommended that the Panel find just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.501 (2)
- NRS 281.501 (4)

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether Mr. Waters violated the provisions of NRS 281.501(2) and NRS 281.501(4).

C. RELEVANT STATUTES:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

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2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501¹.

(b) “Unwarranted” means without justification or adequate reason.

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7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

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2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others²

^{1, 2} NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.

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8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

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4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest, without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

D. RESULTS OF SECOND SUPPLEMENTAL INVESTIGATION:

Mr. Waters introduced agenda items for “information/discussion/action,” at the March, April and June 2006 Nevada State Board of Education meetings, regarding proposed standards for supplemental mental health and suicide prevention education programs offered within Nevada public school districts. The Center for Health and Learning, founded by Mr. Waters, would be subject to such proposed regulations. The minutes of the respective Board of Education meetings do not indicate that Mr. Waters disclosed his relationship with the Center for Health and Learning during discussion of the relevant agenda items.

During the Panel proceedings of September 8, 2006 and January 19, 2007, the Panel members requested additional information relating to the contractual and financial relationships between the fiscal agents administering the TeenScreen grant monies, Mr. Waters and the Center for Health and Learning (center). Specifically, the Panel directed staff to obtain additional information regarding whether the center received compensation directly or indirectly from the fiscal agents, Southern Nevada Health District or the Nevada Department of Education, for any services performed by Mr. Waters on behalf of the center.

A memorandum clarifying the funding regarding the center and the Columbia TeenScreen Grant, dated May 9, 2007, was received from Keith Rheault, Superintendent of Public Instruction. The memorandum describes a timeline regarding the disbursement of funds as follows:

June 8, 2005: The original grant to support the Columbia TeenScreen project was approved for the Southern Nevada Health District, in the amount of \$71,440, by the Nevada State Health Division. The original grant period was from July 1, 2005 to June 30, 2006.

October 21, 2005: The Board of Trustees of the Trust Fund For Public Health approved a request to transfer Columbia TeenScreen grant funds, from the Southern Nevada Health District to the Nevada Department of Education, in the amount of \$71,440. The Southern Nevada Health District had not disbursed any of the Columbia TeenScreen grant funds.

December 23, 2005: The Columbia TeenScreen grant award document was approved and provided to Department of Education, in the amount of \$71,440, for the grant period of January 1, 2006 to June 30, 2006.

March 22, 2006: The first request was submitted by the Department of Education for reimbursement to center under the Columbia TeenScreen grant. The amount approved for reimbursement by the Nevada State Health Division totaled \$35,720 for the period January 1, 2006 through March 15, 2006. Payment was made to center.

May 15, 2006: Second request for reimbursement to center under the Columbia TeenScreen grant was made. The amount approved for reimbursement totaled \$35,720 for the period March 16, 2006 through April 30, 2006. The payment was made to the center.

After the second distribution, all funds available (\$71,440) for the Columbia TeenScreen grant were disbursed, a summary report was provided to the state health division and the grant was closed.

D. CONCLUSION:

Allegations regarding NRS 281.481(2):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.481(2). Mr. Waters does not receive any compensation from the Center for Health and Learning. The regulations he proposed would not have created a sole source environment for services offered through the center. Additionally, similar organizations are also allowed to use the Department of Education facilities when available.

Allegations regarding NRS 281.481(7):

There is no evidentiary basis to support the allegation that Mr. Waters acted in violation of NRS 281.481(7). The Superintendent of Public Instruction has indicated previously that he sees the Center for Health and Learning as similar to other non-profits, with which the Nevada Board of Education works, as established under NRS 385.091. It appears that any use of government property and equipment was authorized, did not interfere with the performance of any public officer's duties to the public, the cost or value related to the use was nominal. There is no evidence indicating that Mr. Waters received personal or financial gain from the center. There does not appear to be an appearance of impropriety due to the fact that other organizations have been allowed the same level of use of the Department of Education facilities as the center has been allowed.

Allegations regarding NRS 281.501(2):

In view of the fact that Mr. Waters failed to make the disclosure required by NRS 281.501(4), the public was not informed of the potential effect of his action or abstention. In failing to disclose sufficient information regarding his commitment or interest, as required by NRS 281.501(4), Mr. Waters also failed to make an evaluation of the relevant factors to determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment or interest to the center. Such an evaluation would have been necessary to determine whether or not to abstain on this matter.

Allegations regarding NRS 281.501(4):

It appears that Mr. Waters had a pecuniary interest and a commitment in a private capacity to the center. As such, he had an obligation to disclose sufficient information concerning his commitment or interest in order to inform the public of the potential effect of the action or abstention upon the entity to whom he had a commitment or interest. NRS 281.501(4) requires that such a disclosure must be made at the time the matter is considered. There is no evidence that such a disclosure was made at the times the matter of the proposed regulations was being considered.

E. RECOMMENDATION

The Executive Director finds that there is no credible evidence to substantiate a potential violation of NRS 281.481(2) or NRS 281.481(7). Accordingly, the Executive Director recommends that the panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion regarding whether Mr. Waters violated the provisions of NRS 281.481(2) and NRS 281.481(7).

The Executive Director finds that there is credible evidence to substantiate a potential violation of NRS 281.501(2) or NRS 281.501(4). Accordingly, the Executive Director recommends that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion as to whether or not Mr. Waters violated NRS 281.501(2) and NRS 281.501(4).

Prepared by: Matt C. DiOrto DATED: May 16, 2007
MATT C. DI ORIO
SENIOR INVESTIGATOR

Approved by: L. Patrick Hearn DATED: May 16, 2007
L. PATRICK HEARN
EXECUTIVE DIRECTOR